

# Update on Seneca Nation of Indians WQS and 401 Certification Program Authorization

Date Prepared: 3/31/20

**Divisions involved:** WD, MSD

**Issue:** EPA Region 2 (R2) is working with the Seneca Nation of Indians (SNI) on two issues. The first issue provides a status update on R2's pending approval of SNI's 2018 application for treatment as State under Section 303(c) of the Clean Water Act. The second issue involves SNI's 2019 consultation request to enter into a Memorandum of Agreement with EPA (R2 & R3) and the States on water related matters.

**Location:** Salamanca, NY

**Context:** The two issues are discussed further below:

Issue 1: Treatment as a State (TAS)/Water Quality Standards (WQS) – Information and provided as a status update on R2's pending action.

## Ex. 5 Deliberative Process (DP)

Issue 2: SNI Consultation for Formal Agreement – SNI would like the agreement to include a commitment and signatures from both R2 and R3

- In 2019, at R2's annual Indian Leaders meeting, SNI requested formal consultation to enter into a Memorandum of Agreement with EPA and the States (Pennsylvania and New York) to formalize communication on water related matters.

**Ex. 5 Deliberative Process (DP)**

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## Critical Messages:

### Ex. 5 Deliberative Process (DP)

**Expanded Information:** R2's public outreach on the SNI application consisted of the following activities:

- Initial Outreach to Appropriate Governmental Entities and the Public: As required by EPA's regulations, Regional Administrator Pete Lopez sent letters to the Governors of New York and Pennsylvania on November 16, 2018, providing an opportunity to comment on the SNI's assertion of authority to administer the WQS and Certification programs. R2 also published notices in local newspapers on December 6, 2018. Neither State commented at that time on the application, and no public comments were received.
- Additional Local Outreach: On July 1, 2019, R2 exercised its discretion to conduct additional outreach and sent nine emails as a courtesy to the county commissioners and city officials neighboring the SNI's reservation, requesting any questions or comments on the SNI's assertion of authority to regulate surface water quality within the Nation's reservation. R2 received one inquiry – from Deputy Commissioner Kathleen Ellis of Cattaraugus County – requesting a copy of the application and inquiring about potential impacts of a program approval on the State Revolving Fund (SRF) program. R2's response to the Deputy Commissioner's inquiry confirmed that:
  - Approval of the SNI application would not change the Nation's eligibility for SRF funding. The SNI would continue to be eligible for funding under the Clean Water Indian Set-aside.
  - The SNI would not be eligible to compete with NYS municipalities for SRF funding available to NYS municipalities. Deputy Commissioner Ellis confirmed that the EPA had answered all of her outstanding questions.
- Second Round of Local Outreach: In October 2019, EPA again exercised its discretion to provide additional outreach, this time targeting county officials and upstream municipal dischargers with a hydrologic connection to SNI reservation waters. R3 worked with PADEP to gather appropriate contacts and on November 15, 2019 R2 sent forty outreach letters to these entities. R2 received a total of 10 inquiries via phone or email, including one opposition letter from the Pennsylvania Grade Crude Oil Coalition (PGCC), Pennsylvania Independent Oil & Gas Association (PIOGA) and Pennsylvania Independent Petroleum Producers Association, Inc. (PIPP). The PGCC/PIOGA/PIPP letter argued that the SNI application was incomplete and should therefore be disapproved. Upon review, R2 and HQ have determined the application meets all statutory and regulatory requirements, and is far more complete than other applications
  - Bradford Sanitary Authority sent a request to R3 to determine whether the pending application could have any future impact on their operations or permitting requirements. R2 and R3 had a conference call with Bradford Sanitary Authority on January 7, 2020 and on January 8, 2020 the EPA R 3 sent

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Bradford Sanitary Authority a letter stating: “If the TAS application is approved, the Seneca Nation’s Clean Water Act authorities would be limited to the Seneca Nation’s territorial boundaries. Outside of the Seneca Nation’s territorial boundaries, applicable State and Federal laws would dictate the water quality standards for any given stream. If the Seneca nation does adopt and EPA approves any such tribal water quality standard, that standard would need to be taken into consideration by the NPDES permitting authority when determining appropriate effluent limits for future Bradford Sanitary Authority NPDES discharge permits.”